D.B.CIVIL SPECIAL APPEAL (W) NO. 147/2007

State of Rajasthan & ors.
v.
Gandi Lal Harijan

Date of order : 14.05.2007.

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

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Shri M.S.Raghav, Addl. Advocate General

Limitation matter has been put up for consideration but we looked into prima facie merit of the case so that the condonation may not be a futile exercise, and accordingly heard Shri M.S.Raghav, Addl. Advocate General for the appellants.

This special appeal is directed against the order of the learned Single Judge allowing in part the writ petition of the respondent, setting aside the order dated 16.7.1996 so far as it related to forfeiture of past services of the respondent, and directing the appellants to allow retiral benefits to him.

It is not in dispute that the respondent was awarded the punishment of censure and his past service was also forfeited for the same incident. We have doubts if past service of the delinquent can also be forfeited where substantive punishment has been awarded to the delinquent. It is true that forfeiture of past service is not specified as a punishment in rule 14 of the

Rajasthan Civil Services (CCA) Rules, but undoubtedly it has more severe consequences than censure. Besides forfeiture of past service may involve the element of double jeopardy. This apart, there can be no doubt that such an order can not be passed without giving opportunity of hearing to the delinquent and in that case the order is liable to be set aside for violation of rules of natural justice. It is not in dispute that the impugned order was passed without giving opportunity of hearing to the respondent.

In the ordinary course we might have given liberty to the State to proceed de novo, giving opportunity of hearing to the respondent, but in view of the fact that the respondent retired ten years ago, we are of the view that it would not be proper exercise of discretion to permit fresh inquiry at this stage. In our opinion the matter should be allowed to rest.

We are thus of the view that no useful purpose would be served by condoning the delay. Appeal is dismissed.

(MOHAMMAD RAFIQ), J. (S.N.JHA), C.J.

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